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of the universe, and the attributes of the spiritual world, with effort. Bryant does not address the feelings or sympathies of common readers. He communes not with others, but himself. His poetry is entirely spiritual. Hence it will not be esteemed by the unthinking; but it will charm those for whom it was written,—men of sound judgment and cultivated taste.

ART. IX.—*North-Eastern Boundary.*

1. *The Decision of the King of the Netherlands considered, in reference to the Rights of the United States and of the State of Maine.* Portland. 1831.
2. *Report of the Committee of Public Lands, on the Subject of the North-Eastern Boundary.* Boston. 1832.
3. *Report of the Joint Select Committee of the Legislature of Maine, on so much of the Governor's Message, as relates to the North-Eastern Boundary.* Augusta. 1832.

It is said of Sir Orlando Bridgman, who was advanced to the seals on the dismissal of Clarendon, that being 'afraid of deciding wrong, he labored to please both sides, and always gave something to each of the contending parties, that came into his court.' Upon this it is added by Dr. Lingard, on the strength of old Roger North, that 'he lost his reputation.' This is a casualty, which we should be sorry to see occur in the case of the illustrious head of the house of Orange Nassau, who has struggled manfully to maintain his solemn rights to his petty territory, and has preserved a title to the respect at least of Europe, in the strenuous and energetic hour of his adversity. *Maintiendrai*, indeed, was the motto of his regal arms; and he has manifested a most invincible and exemplary repugnance to the reduction of his agreed and established limits. A well considered article in Blackwood's Magazine for October last, eulogizing the wisdom of the Congress of Vienna, in creating the kingdom of the Netherlands, as a master-piece of Anti-Gallician policy, pronounces its disseverance to be the greatest crime in the conduct of Europe, since the partition of Poland. That is a matter, however, with which we do not concern ourselves. We respect the principle of the King's opposition, so far as it is

founded on the plighted faith of public stipulations, and we cannot avoid being struck with the singular *rapprochement*, as it was expressed in the Court Journal of the Hague, between the relations of the king of the Netherlands and the Government of Great Britain, by which the latter was so soon called upon, reciprocally, to interpose on the subject of boundaries. From the cold shoulder shown toward him in the last speech from the British throne, it may be inferred, that the merit of his amicable proposal for the composition of the dispute between that country and this, is in the way of being as indifferently requited on one side, as it is of being acknowledged upon the other. The British Government, we understand, have signified their acceptance of his award ; but he has not yet signified his acceptance of theirs. He appeals with earnestness to the public faith of Europe, and the positive obligations of treaties.

The topic of controversy, which has passed under the consideration of the King of the Netherlands, is one which we wish to deal with tenderly, and at the same time, truly and faithfully. We are sensible of the propensity of an umpire, as pointed out by Mr. Gallatin, to ‘split the difference ;’ and can easily suppose, without imputing any obliquity of intention to a proceeding, which may be accounted for on very obvious principles, that the arbiter might have conceived he was verily fulfilling the final purpose of the parties, in having recourse to his opinion, as a pacific expedient for cutting the knot, which resisted any more learned mode of solution. We might choose to adopt the more charitable supposition, rather than countenance any miserable apology of political expediency, to varnish over the weakness of compromising those commanding principles of sovereign law, which maintain their equal ascendancy over thrones and globes.

Some prescription might possibly seem to exist, for treating this as a difficult and doubtful affair, from the long pendency of the ancient quarrel concerning the limits of Acadia, under the treaty of Utrecht. That controversy was brought no nearer to a close, by the commission established after the treaty of Aix-la-Chapelle ; and, as is well known, never came to any determination. The English undertook to extend the limits of Acadia up to the Penobscot, in order to extinguish the French pretension to the country ; while the French, by an artificial construction of the article in question, undertook to confine the cession to a part of the present peninsula of Nova

Scotia. The remark of Barbé Marbois, in relation to the comparison of French and English titles on this continent, applies here,—that they throw very little light upon the subject. The dispute in this quarter existed not so much on the St. Lawrence, as the Atlantic; and after reconnoitring the field of controversy attentively, we believe it was found to contain little or nothing to the purpose of the present question, and that the idea of any advantage from referring to it was abandoned. We may treat this topic now as somewhat familiar to our readers, and take it up without much preface; meaning to pursue a general line of remark upon it, in support of those views of the right, which have heretofore been taken in this journal. Any further consideration of this somewhat dry subject is so far from being precluded by the opinion delivered by the King of the Netherlands, that it only seems to furnish occasion for directing attention more strongly and distinctly toward the prominent points of debate, and ascertaining whether they have been sufficiently regarded. The long deliberation which has been exercised by the Government of the United States, upon the propriety or expediency of accepting the result of that equivocal arbitration, affords another opportunity of expressing our apprehension, that the principal facts in relation to this question have either been grossly overlooked, or greatly misunderstood. We refer mainly to the evidence of the existence of the *northern boundary* of what was Massachusetts, now Maine, in the first place; and the determination, thence resulting, of the *point* co-incident with the north-west angle of Nova Scotia. It is, indeed, aptly remarked by the Committee of the Massachusetts Legislature, that ‘the objection to the proceedings of the King of the Netherlands has no connexion with the merits of the case as between the two parties.’ He has not pronounced upon them. The Governor of Massachusetts justly observes, that ‘the reference of the boundary question to the King of the Netherlands has been wholly ineffectual to its just decision. He has palpably departed from the plain terms of the submission, and substituted a proposition to a compromise of difficulties, for an award upon the matter directly in issue between the parties. As an arbiter, his office strictly was, *to apply a descriptive line of boundary to corresponding appearances on the face of nature*. Rejecting these, he has attempted to establish a new course of division, denoted by monuments totally dissimilar, and through a tract

of country distant and widely different. By no rule of municipal or international law, can such decision be made of binding obligation. There is no occasion to inquire into the extraordinary influences, which may be supposed to have produced it.'

We consider the historical existence of this part of the treaty boundary in dispute, as dating in truth from the termination of the controversy concerning the limits of Acadia, and the execution of the arrangements devised by the British crown, consequent upon the peace of 1763. That was the era of a totally new system of foreign relations in regard to this country,—all that formerly belonged to France on this side of the Mississippi being surrendered. It was distinctly marked, also, by the entrance of Great Britain upon a new plan of colonial policy, in regard to the limits of her old possessions upon this continent. This was adopted, for the purpose of curtailing the dimensions of these provinces in the rear, and at the same time of securing to the crown the great tracts of unsettled territory, the adverse title to which was now extinguished. The colonial charters, comprehended principally between positive parallels of latitude, were considered as extending illimitably toward the Pacific, so long as it was convenient to oppose them to the pretensions of France, and while the actual progress of the colonies in that direction was thwarted by the movement of the French power across from Canada to Louisiana. The conquest of Canada was followed by a *coup d'état* of the British Government, which may bear a limited comparison, for the sake of illustration, to that which ensued in France, upon the capitulation of Algiers. Like that, it evinced the instinct of arbitrary authority, alarmed for its absolute ascendancy, to strengthen itself on the occurrence of some new political advantage,—and sought to keep down principles of innate power, that are not capable of being subdued by rescripts or edicts. Little did England, any more than France, indeed, contemplate the prodigious career of consequences opening from the issue of their last conflict at arms, affording a free play to the active principles that had planted this continent from the pressure of a foreign hostile force upon the frontier. But it is no part of our present purpose, to travel out into that immense region of moral and political results, flowing from the causes which conduced to the emancipation of America,—consequences, which neither this age nor another is destined to see exhausted. The leading act, to which we have referred

as fixing the earliest proper date to the present matter of dispute, is the well-known proclamation of 1763. This state paper was far better known in a former age; but its importance has been revived by the circumstance of its having given a *geographical definition of boundary*, which was incorporated afterwards into an act of the British Parliament, and eventually into the treaty of peace between Great Britain and this country.

That this proclamation had a bearing upon the subject of this boundary, there could hardly seem to have been room for question. It was the first public document, emanating from the crown, describing an extent of *highlands, dividing rivers emptying themselves into the St. Lawrence from those which fall into the sea*. This description begins indefinitely, after leaving the forty-fifth parallel of latitude east of Lake Champlain, and terminates toward the Bay of Chaleurs. But this description was not the mere manufacture of that proclamation. We know it may seem to be a piece of supererogation to a great portion of our readers, who take an intelligent interest in public topics, to be at pains to produce proof in regard to the truth of facts, as familiar as any in the history and geography of the country. *Utitur testibus non necessariis in re non dubia* is a reproof of which we should be very cautious, if we had not before our eyes the most pregnant and extraordinary evidence, not merely that these facts have been called in question, and the force of them denied by those who have been extremely earnest to avoid them, but that they are somehow disposed of in the report of the arbiter, either as irrelevant or not properly established;—his opinion having the effect, moreover, either of disaffirming their existence or divesting them of their character. The more highly we are disposed to deem of the moral and intellectual qualities of that distinguished person, who was selected among the sovereigns of Europe to pronounce his judgment upon the subject, the more we are inclined to ask, whether it presented itself in its proper relief to his mind. We pass without observation, the idea of finding the boundary in the bed of a river; and we are led to reflect with more consideration on the proofs afforded by historical and geographical circumstances, by public acts of the highest solemnity, and a long course of policy on the part of Great Britain, in regard to *the fixed character of the north-eastern boundary*.

This question, as we have observed, did not arise between France and England. We mentioned, however, in a former article, that the commissions of some of the governors of Canada, while it was in possession of France, extended ten leagues on the south side of the St. Lawrence. Such seem to have been the commissions of the *Sieur de Lauson*, and the *Vicomte d'Argenson*, in the seventeenth century. We find also, in 1684, a petition from French inhabitants to the King, describing themselves as living on the coast of the south side of the river St. Lawrence down towards *les Monts Notre Dame*; and, in a memoir addressed to the King, by M. de Meules, Intendant of New France, also in 1684, upon the extent of the territory of Canada, it is stated, that the lands in Canada, from the entrance of the river St. Lawrence to ten or twelve leagues about Quebec, are scarcely any of them fit to raise wheat, on account of the chains of mountains which render these places inaccessible. *Si l'on considère les terres du Canada depuis le Cap Breton, qui est l'entrée du fleuve Saint Laurent jusques à 10 à 12 lieues autour de Quebec, on y trouvera peu de terres propres à semer du bled froment, à cause des chaines de montagnes, qui rendent ces lieux inaccessibles.*

But, without going back to an earlier period than that which we have before mentioned, as being the proper epoch of this question, we may refer to the map prefixed to the volume of memorials published in London by the British Commissioners upon the limits of Acadia, in order to support a set of facts, which it has suited the fancy of a later day to represent as fabulous. It may be remarked that this map, together with the volume, was published in 1755, when both parties joined in an appeal to the public opinion of Europe in the same form. The British Ministers, also, communicated their justificatory memoir the same year*; and the war had actually broken out in America,—that war in which our Washington first became conspicuous. Coeval with this map was likewise published that which is called Mitchell's, under the patronage of the Board of Trade and Plantations. We put the two maps together, because they belong to the same period and come in apposition with the circumstances of the time, and because they both agree in giving a geographical representation of the

* The British memoir was written by the historian Gibbon.

natural features of the country, corresponding in the main, though manifestly not copied from each other, with the general description we have had of them from that time almost, we may say, if not quite, to the present. In both maps, New England is bounded by the Atlantic on one side and the St. Lawrence on the other; in both, the boundary from the Atlantic runs north, intersects ridges of highlands lying between the rivers St. Lawrence and St. John, although in Jeffery's map, (published by the Commissioners,) it was drawn from the Penobscot, and in Mitchell's from the Maguadavie, which he denominated the St. Croix. On the Commissioners' map, there are two St. Croix laid down between the Penobscot and St. John, one being the Passamaquoddy and the other the Maguadavie, and a due north line from either would strike the range of highlands laid down on that map. On the Commissioners' map, the highlands are delineated as extending in continuous ranges along the whole length of the river St. Lawrence from the Connecticut and Chaudière, to the extremity of the cape or projection of Gaspe. On this map, they rise in elevation toward the east and assume the appellation of Albany or Notre Dame mountains. On Mitchell's map, these are called *Lady* mountains. The latter map differs from the other, in giving to the ranges of highlands further up the river St. Lawrence, as well as in the quarter below, a more rolling and diversified direction,—in some parts obliquing or inclining more to a parallel with the various sources of the different rivers, instead of marking them off by a uniform dividing course. In neither of the maps, are there any traces of highlands south or west of the river St. John, to the north of either of the rivers St. Croix; nor any where indeed above those rivers, east of the Penobscot. On the Commissioners' map, it may be mentioned, that the St. John is also called the *Clyde*, to keep up in some mannner, it is probable, the mere distinction between New England and *Nova Scotia*, which was of less compass than *Acadia*, unless the Penobscot was to be considered the St. Croix. The western limit of Nova Scotia, by the original grants, was the St. Croix, to whatever river that name was to be affixed.

There is no species of evidence that addresses itself more sensibly and satisfactorily to the mind, on a subject like this, than that which is found in the language of maps and charts. There is a more lively communication of knowledge on some

points to the eye, than the ear. Language of that kind is more universal, than that of books and manuscripts. Every son and daughter of Adam is said to be interested in geography. These delineations of the observable parts of the globe, are drawn from all the living sources of information. They expose themselves to perpetual observation and correction, and no gross error can go long uncorrected. The aspect of the country elevated above the shore is one that would present itself to the navigator, while its profile might remain comparatively obscure and unperceived upon the interior. These elevations approached, on one side, the St. Lawrence, and on the other the Bay of Chaleurs, where there were fishing stations. It can hardly be conceived, that all these appearances, which figure so frequently in the geographical documents of the day, can be resolved into optical illusions. At any rate, if such were the faith of the age, it serves to establish the understanding of any act in relation to the subject. For the state of opinion and feeling prevailing at that period, we may refer to the American History of Douglas, which was under revision from 1746 to 1760. At this last period, it will be noted, the conquest of Canada was not completed.

An edition of Douglas's Historical and Political Summary of the British Settlements in North America, was published in London, in 1760. In the peace of Utrecht, he maintains that it was omitted to settle a line between the English colonies and those of France, from north to south; and that it would be desirable to attend to this, in the proposed negotiation for peace. Referring to natural boundaries as the most advantageous, he represents the river St. Lawrence, the lakes Ontario and Erie, and the Apalachian mountains, as an eligible French and English boundary. The river St. Lawrence, it will be recollected, was considered and treated by Great Britain, as the southern boundary of Canada. The eastern part of New-England extended in its full breadth to the bank of that river; and it was not contemplated, at that moment, that the French were to be dislodged entirely from the St. Lawrence. He then takes 'a cursory view,' as he terms it, 'of the *southern or British side of this great river*, and of the lakes Ontario and Erie, and of the Apalachian mountains, or blue hills;' and proceeds,—*'From Cape Rosières, at the southern side of the river St. Lawrence, to La Rivière Puante, or the Indian tribe called the Mission of Bisancourt, over against Les Trois Rivières, are*

about four hundred miles. The barrenness of the soil, the impracticableness of the mountains, which lie but a small way south of the great river, the rapidity of the short rivers or runs of water from these mountains, render the country inhospitable, there being no proper water carriage for Indian canoes.’ He afterwards passes to the southern portion of his proposed boundary, the Apalachian mountains, or great blue hills, land which he describes as much elevated in the air, and appearing, at a considerable distance, of a sky color. But it is for the fact of a commonly-known and well-determined range of highlands bordering on the St. Lawrence, and extending from Cape Rosières to opposite Trois Rivières, that we quote this description of Douglas. The short rivers mark the declivities. The account of the soil, and the aspect of the country, agree with that given by the French the century before. A map is published with it, presenting various ranges of highlands in the vicinity of the St. Lawrence, and mouth of the St. John; and public attention is particularly called to the subject of a boundary.

Some attention has been drawn of late, to the situation of a small French Acadian settlement or colony on the border of the river St. John, above the Great Falls. This is a remnant of the ancient French population of Acadia, of whose removal from their farms, and banishment from Nova Scotia, so painful an account is given from Halliburton’s History, in a former number.* A brief and touching account of the character and sufferings of those early inhabitants of that territory, is given by Barbé Marbois, who pronounces them an excellent race of Frenchmen. The language which they speak is said to be of purer French, than that in use among the Canadians; and their ancestry has been identified with the disbanded regiment of Carignan,—raised at a time, when the impoverished ranks of the French noblesse, excluded by the hereditary *prestige* from all other employment, were content to occupy the humblest stations in military life. Different pretexts have been assigned for the expulsion of these people from Nova Scotia, the most familiar of which is that of their sympathy with the fortunes of their European brethren, in their conflicts with the English arms on this continent. Douglas says that,—‘By the peace of Utrecht, the French in Nova Scotia, upon their taking the British Government oaths, were to continue in their posses-

* January, 1830.

sions ; the not appropriated lands, by the King of Great Britain's instruction, were reserved for protestant subjects ; notwithstanding this instruction, the French Roman Catholic subjects, as they swarm, make free with these crown lands.' 'Therefore,' he remarks very coolly, in a note to this dry text, written probably at the first publication of his work, 'they must be removed by some subsequent treaty,—or be elbowed out,—or their language and religion must gradually be changed.' And again he suggests, with much *sang froid*, that 'the regiments in garrison at Louisburg may be conveyed to Nova Scotia, and cantoned among the French settlements,—after some short time, to be disbanded with some encouragement of lands, and other things, as settlers. Thus we may by degrees elbow the French out of their language and religion,—and perhaps out of their lands.'

An Indian barrier was proposed by France to England, in the negotiations at Paris, in 1761, upon the country of the Ohio, and the region toward Canada. But this was rejected by Mr. Pitt ; and the treaty of Paris, which put an end to the dominion of France over the whole territory, produced the proclamation of 1763. This was a great act of State policy ; the design of which was, as already adverted to, to circumscribe the colonies, and, under color of forming Indian reserves, in reality to convert the interior of the country into a grand royal domain. It was so devised, as to create a geographical barrier to the advance of the colonies in that direction. The crown seems to have been considered as coming into the possession by conquest ; and, in succeeding to the pretensions, appears also to have adopted the views of France,—that is, of environing the colonies with a frontier that should oppose their further progress, and prevent their development. It is mentioned in the Annual Register of 1763, which records this proclamation, that great pains were taken to come at an exact knowledge of every thing in regard to the state of the recent conquests on this continent ; and, in framing the new Government of Canada, it is stated in that work, that, after quitting Lake Champlain, and departing from the forty-fifth parallel of latitude, the line was carried '*quite to the Gulf of St. Lawrence, through the highlands which separate the rivers which fall into the great river of Canada, from those which fall into the ocean.*' We quote this well-known work, merely to show the popular understanding of that part of the proclamation.

This mode of marking off the limits of the colonies to the

west and north-west, by a line along the heads of the rivers falling into the Atlantic, was a favorite one in forming that proclamation. It contained a prohibition, that, 'no governor or commander-in-chief of our other colonies or plantations in America, (besides the Governments of Quebec and Florida established by that act,) do presume for the present, and until our further pleasure be known, to grant warrant of survey, or pass patents for any lands, *beyond the heads or sources of any of the rivers which fall into the Atlantic ocean from the west or north-west.* It was further declared to be the royal will and pleasure to reserve, for the present, 'under our sovereignty, protection, and dominion, for the said Indians, all the land and territory not included within the limits of our said three new Governments, or within the limits of the territory granted to the Hudson's Bay Company, as also all the land and territories lying to the westward of the *sources of the rivers which fall into the sea from the west and north-west*, as aforesaid.' This limitation of the practical jurisdiction and extent of the colonies, seems to have reached from the Ohio toward Lake Ontario; and pursuing the line of demarkation, established as the southern boundary of the Government of Quebec,—which constituted a considerable part of the exterior boundary of the Provinces, especially those of New-England,—along the forty-fifth degree of latitude, it is described as '*striking to the North-east, along the highlands, which divide the rivers that empty themselves into the grand river St. Lawrence, from those which fall into the sea; and also along the North coast of the Bay de Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosières.*' This idea of a limitation of the Atlantic provinces, by the sources of rivers falling into the sea from the West and Northwest, seems to have been extended from the Florida coast on the Gulf of Mexico, to the Gulf of St. Lawrence; and was further carried into effect in the division of the province of Quebec from the territories of New-England and Nova Scotia, by the additional mode of description thus expressed for the purpose of absolute certainty, and to render this last line of demarkation as definite, as the parallel of latitude crossing Lake Champlain was supposed to be.

We may notice, in passing, how much more the limits of the old colonies of Great Britain were abridged, by the complete triumph of their joint arms, and the final success of the negotiations, than they would have been, if the French had not

been entirely expelled from their possessions. In the various projected expeditions to Canada, in the conquest of Louisburg and that of Nova Scotia, it was the opinion of John Adams, to the last, that New England had expended more blood and treasure, than all the rest of the British empire. *Nova Scotia* was originally and properly a British Province, granted, in the first place, after the accession of James of Scotland to the English throne ; and, although yielded up by the policy that prevailed in the courts of Charles I. and Charles II. in the treaties of St. Germain and Breda, recovered once by Cromwell, and again by New England, in 1690. It was then incorporated, with the intervening territory of Sagadahock and the Province of Maine, in one common charter with the Province of Massachusetts Bay. It was again relinquished to France, by the treaty of Ryswick, in 1697 ; re-conquered by a force from New England and Great Britain, and finally ceded by France to Great Britain, in 1712. It was not formally re-annexed to the Province of Massachusetts ; and the power of that Province over it was suspended, during the dispute concerning the limits of Acadia. *The grant of Nova Scotia to Sir William Alexander, as well as that of the territory of Sagadahock to the Duke of York, extended to the river St. Lawrence* ; and that whole country continued to be considered a British possession, after the treaty of Utrecht. We may, therefore, regard these territories as coming within the description of that principle of limitation, which Great Britain thought fit to apply by the proclamation of 1763, of marking off her Atlantic colonies by the sources of rivers, falling into the sea from the west and north-west. The application of that principle was strengthened upon this frontier, by the well-known heights of land, adjacent to the river St. Lawrence, and dividing the rivers flowing into it, from those emptying into the ocean ; and the same, whether falling into the Bay of Chaleurs, Miramichi, or the Bay of Fundy. All these streams were equally determined, as flowing from the north or north-west.

In erecting the Province of Nova Scotia, in 1763, it was built upon the base of the new Government of Quebec, established by the proclamation. The proclamation was dated in October. The commission to Governor Wilmot, by which the Province of Nova Scotia was defined, was in November, 1763. The northern and western, or inland boundaries, were thus described, viz. *To the northward, by the southern bound-*

ary of the *Province of Quebec*,—‘and to the westward, although our said Province hath anciently extended, and doth of right extend, as far as the river Pentagonet or Penobscot; it shall be bounded by a line drawn from Cape Sable across the entrance of the Bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn due north from thence to *the southern boundary of Quebec*.’ This description constituted the *north-west angle of Nova Scotia*.

The Annual Register, for 1763, contained a new map of the British dominions in North America, with the limits of the Governments annexed thereto, by the treaty of peace, and settled by the proclamation. On this map, the southern boundary of the Province of Quebec is marked as passing along from Lake Champlain, in the forty-fifth degree of latitude, to the north of Connecticut river, and then along highlands, approaching the river St. Lawrence, and rounding north of the river St. John, to the head of the Bay of Chaleurs. On the same map, a line is drawn directly north from the river St. Croix, until it strikes *the ridge of highlands north of the St. John, along which the southern boundary of Quebec is continued*. In the former maps, such as Mitchell’s and Jeffery’s, which have been mentioned, this line went across these highlands to the St. Lawrence; but here it is interrupted and stops short. The same map appears in subsequent editions of the Register, to the end of the American war. Here *the north-west angle of Nova Scotia is marked out to the eyes of all the world*.

The Province of Massachusetts, which otherwise might have well revived its right under the charter of William and Mary, to go even to the Gulf of St. Lawrence, was thus restricted *on the east* to the river St. Croix; and one side of its territory was taken off. To this proceeding, however, we do not hear of any objections being made by the Province. But the southern boundary of Quebec, then established, presented another barrier to the north, which was not regarded with satisfaction. The grant to the Duke of York in 1664, which has been mentioned, was of ‘all that part of the main land of New England, beginning at a certain place, called or known by the name of *St. Croix*, next adjoining to *New Scotland*, in America, and from thence along the sea-coast,’ to Pemaquid river, and thence to the Kennebeck, ‘and so upwards, by the shortest course to the river Canada, northward.’ This grant, which was confirmed by Charles again, after the treaty of Breda

in 1674, was incorporated, as we have mentioned, to its whole extent, in the Province charter. Some little obscurity, indeed, was cast upon this point, by Mr. Gallatin, in his edition of the Land Laws, and a suggestion was dropped by him, that there was probably some omission, in the description of the Province charter, to square the northern boundary of this intermediate territory with the Gorges grants, with which he compared it. This notion was further countenanced, by a hasty expression in a letter of that gentleman to the Secretary of State, after the conclusion of peace at Ghent, a paper not prepared for any public purpose, and brought out upon the call of what is termed the *Russell Correspondence*. This remark was, that the territory to the north of forty-five degrees, eastward of the Penobscot river, did not belong to Massachusetts, as would appear by recurring to her charters, but that the property was in the United States. Mr. Gallatin has since shown, that he was completely mistaken in that respect; and nothing, indeed, is necessary, beyond a recurrence to the charters, to make that mistake manifest. In the Province charter of 1691, it is true, there is a declaration, that 'no grants of any lands, lying or extending from the river of Sagadahock to the Gulf of St. Lawrence and *Canada rivers*,' &c. by the Government of the Province, should be valid without the assent of the crown; because, in fact, the property of that territory had accrued, through the succession of the Duke of York, to the crown, and therefore the crown had a perfect right to limit and control the disposition of it by the saving of the charter. Subject to this reservation of a confirming power, the Government of Massachusetts seems to have been authorized to make as good grants within that region, as in other portions of its territory.

It is plain enough from these circumstances, as we may presume to believe, that Massachusetts had no interest in *inventing an artificial barrier* to interrupt her own progress, as a Province, to the St. Lawrence. The opinions of the Attorney and Solicitor General of the crown, Yorke and Talbot, both afterwards Lord Chancellors, had been pronounced, (1731,) that the intervening tract of territory between the Kennebec and St. Croix was granted by the charter to the inhabitants of the Province, and that the rights of Government, granted to the Province, extended over it. The Lords of the Board of Trade, as it seems, sanctioned the publication of Mitchell's map in 1755,

bounding this territory, with other parts of New-England and also Nova Scotia, upon the St. Lawrence. The royal proclamation of 1763, however, established a barrier of highlands, portioning off a strip of the country contiguous to the river St. Lawrence, as a part of the Canadian Government; and the Lords thereupon began to think, that the Massachusetts Province could at least claim no right to the lands on the river St. Lawrence, notwithstanding the opinion formerly expressed on that point, though they did not deny her jurisdiction over the territory. Massachusetts had made grants east of the Penobscot, but not upon the St. Lawrence; and while she was desirous of obtaining a confirmation of those grants from the crown, the crown also wanted a release of the right of Massachusetts to the south bank of the St. Lawrence. Lord Hillsborough interrogated the agent of the Province, Mr. Mauduit, whether he had any authority from the Province, relative to the lands upon the south of the river St. Lawrence. It seems to have been proposed, that if the Province would relinquish to the crown the claim under their charter to the lands on the St. Lawrence, designed by the proclamation to form part of the Government of Quebec, the crown would make no question concerning the validity of any of their grants of lands, leaving them to the St. Croix, and from the sea-coast of the Bay of Fundy to the bounds of the province of Quebec; and Mr. Mauduit and Mr. Jackson came to the conclusion, which was communicated to the General Court, that '*the narrow tract of land, which lies beyond the sources of all your rivers, and is watered by those which run into the river St. Lawrence,*' might therefore be conceded to the crown, which considered it of so much importance 'to preserve the *continuity* of the Government of Quebec.'

The Quebec Act of 1774 only transposes the description of the proclamation of 1763, beginning at the other extremity, and returning 'by a line from the Bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea,' to a point of latitude (45°) on Connecticut river. This well-remembered act of Parliament followed the forty-fifth parallel of latitude to the river St. Lawrence, and through Lake Ontario, and upon the south-eastern bank of Lake Erie to the boundary of Pennsylvania, and by the western boundary of that Province to the river Ohio, and along the Ohio to the

Mississippi. All the territory to the north of this line and south of the Hudson's Bay Company's limit, was incorporated, as belonging to the crown of Great Britain, into the Province of Quebec. This was a more absolute and decisive demarkation throughout its extent, than that which was traced by the proclamation of 1763; but it was a result of the same policy. There can be no question, we suppose, that both the royal proclamation of 1763, and the parliamentary act of 1774, were innovations upon the Province charter of Massachusetts; and the propriety of our referring to these measures at all, in vindication of our title to the remainder of our territory, has been questioned, on the ground that they were complained of in the colonies, as being infringements. Still they may be referred to as acts of the British Government, although we might have had no cause to be contented with them. They may be referred to as authoritative acts of that Government, establishing the bounds of their recently acquired empire, between which and their elder dependencies on the seaboard, they were anxious to establish such an industrious partition. We may well refer to those acts as establishing the existence of certain monuments, to which they distinctly and carefully refer themselves, as separating the inferior tributaries of the St. Lawrence from the more majestic streams, that find their way, like the St. Lawrence, to the ocean. And although we may have originally demurred to the rightfulness of these arbitrary arrangements, it was never denied that this delimitation was within the plenitude of British power, so far as it related to New-England. It was in regard to the disposition of the western territory, that the greatest objection was made, in respect to the *strip taken off from the St. Lawrence*, as well as the separation of Nova Scotia. The Province of Massachusetts, as appears from Mr. Mauduit's communication, seems to have acquiesced; indeed we have never heard of a question raised in regard to their final operation on this frontier.

We may refer to these acts, therefore, we conceive, notwithstanding they were abridgments of our limits, as *public declarations of facts*; and the proclamations of them made by those who had the means, and the best means of knowledge in their possession. Few have the means of seeing and judging with their own eyes of the truth of these facts, but all may be said to have access to these archives, which have been hung up on high, and give to these plain and palpable descriptions

the character of truisms in political geography. These highlands stand forward upon the proud front of the public faith of Great Britain, as though they were visibly marked on the horizon to our view. Officially there may be those who, at this late day, may affect to doubt their existence; but if they do not exist as they are described upon the face of nature, falsehood is then stamped upon the face of those royal and imperial documents; and confidence is impaired in the solidity of those principles, on the strength of which we ought to be able to repose with as much certainty, as we might upon the constancy of the laws of nature.

Besides these solemn and authoritative assertions of the British crown and parliament, there is also the universal evidence of the maps that were published from that period in England, it is sufficient to say, to the close of the American war, although the remark might be extended down to a much later day. In all the maps published during these twenty years, there was a continuous and visible representation of highlands, receding to the right of the waters falling into the St. Lawrence, and to the north of all the waters flowing into the Atlantic or any of its bays. There were as many as twenty maps of this description, presented to the umpire. There were the common maps, designed to exhibit the geography of the country; maps of the continent; of the British dominions in North America; and maps to illustrate the history of those dominions. There were Danville's maps, improved with *English surveys*; there were maps corrected from the materials of Governor Pownall; there was the American Military Pocket Atlas, published at the commencement of the Revolution, to show the seat of war in the northern colonies; the map of the Province of Quebec; and Faden's map of North America, from the latest discoveries, engraved for Carver's Travels, in 1778 and 1781. On all these maps, we believe, without exception, the north-west angle of Nova Scotia is laid down in the same manner, by a line from the St. Croix, north of the St. John.

With reference to these maps of the country from 1763 to 1783, they may be adduced not merely for the evidence they afford of the geographical state of the country at that period in themselves, but because they go to establish the full belief, that then was and has ever since been entertained, in respect to those great features of rivers and highlands, by which the face of the country was marked. Let the fact be as it may,

this was the opinion of the age, and it shows what was universally thought and understood to be the truth, at the time of the treaty of 1783. This evidence addressed itself to the eyes of every man in Europe or America, at an era of great interest and inquiry. It furnished a panorama of the country to those who never could expect to be able to trace the outline except from the plate before them, and carried its knowledge into every library, into every public office, and almost into every counting-room in the kingdom or on this continent. It was the guide of the tourist, it was the companion of the man of science, and the manual of the military officer. There can be no suspicion of any fabrication. These maps were all published in London, under the observation, if not under the actual sanction, of the colonial department. So far back as Mitchell's map, which was published in 1755, and the map published by the English commissioners on the limits of Acadia in the same year, and before these objects can be imagined to have been raised into existence in opposition to us, these appearances present themselves. For fifty years, maps of this description have been published and sold at a shop in the Strand, facing toward Charing Cross. If it be suggested, that these maps are copies from one another,—which in some respects they are very far from being,—what better proof can there be of the steadiness and singleness of conviction upon that score, and which extended down, unabated, for half a century? The pertinence of this species of proof was called in question before the arbiter. Map A, it was contended, was the only piece of evidence of that kind, proper for his consideration; and this map A was a mere plan of the territory in dispute, adjusted by Mr. Gallatin and Dr. Tiarks, and annexed to the convention. It was nothing but chalk. But the physical existence of the highlands described in the British acts has not been disproved, although it has been disputed. Further surveys of that region from one end of the direction given to the other, (an operation which has never been accomplished since the treaty of Ghent,) may vary the altitude of these highlands; but they can never alter the state of the fact as to the firm opinion of the age, and the actual intentions of the British Government in respect to this boundary, in all its proceedings, from the peace of 1763 to the treaty of 1783. What may be asserted with confidence, even at this day, when much has been done, and it is impossible to say without any success, to

deface the lines and monuments which were well established in former times, is this ; that there is a *historical chain or connexion of highlands sweeping round the heads of our great rivers, which flow into the Atlantic, namely, the Kennebeck, Penobscot and St. John*, and shelving comparatively very near to the coast of the river St. Lawrence. Such was the state of the fact in the public mind, at the peace of 1783.

The second article of the treaty of 1783, in order, as it premised, ‘*that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented*,’ established their boundaries in the first place in the following manner ; from the north-west angle of Nova Scotia, viz. that angle which is formed by a line drawn due north from the source of the St. Croix to the highlands,—which (highlands) *divide the rivers that fall into the Atlantic ocean from those which fall into the river St. Lawrence* ;—and again, as they are described in another part of the same article,—along the said highlands which divide the rivers that empty themselves into the *river St. Lawrence*, from those which fall into the *Atlantic ocean*, to the north-westernmost head of Connecticut river, &c. This is the beginning of the description *designed to prevent all disputes* ; and it is most remarkable, that the present dispute arises in relation to *that point, at which the boundaries of the United States commenced* ;—that point which beyond all others is believed to have some positive character of certainty attached to it. That is the point which, it seems, from the opinion of the King of the Netherlands, was not only undefined, but left in a condition incapable of ever being defined. It was singular, indeed, that the first step in the process should have been a false one. It would be most singular, that that which was adopted as an axiom, should not only prove to be a problem, but turn out to have no proper existence whatever.

With the knowledge of these maps before them, for it appears as a fact that sundry others besides Mitchell’s were consulted, and with this knowledge necessarily common to the English as well as American negotiators at Paris, they adopted the existing highland Canadian boundary,—to be intersected by a direct north line from the St. Croix ; and still further to characterize and confirm this frontier of highlands, they describe it as dividing the rivers that fall into the St. Lawrence from those that descend into the Atlantic. The phraseology is thus guarded, and varied, and reiterated, as if to preclude the pos-

sibility of 'dispute.' Indeed it was pointed out, in defence of the treaty, in the parliamentary debate upon the preliminary articles, as its *great excellence*, 'that it so clearly and plainly described the limits of the dominions of Great Britain and America, that it was impossible they could be mistaken; therefore it was impossible there should in future be any dispute between them on the score of boundaries.' In the House of Lords, the treaty was censured with severity for surrendering the keys, the bolts, the bars, the passes, and carrying-places of Canada; and the *highlands* described in the treaty were distinctly recognised, as being *near the river St. Lawrence*. A map was engraved to accompany and illustrate the reports of the debates in Parliament on the Preliminary Articles, and was published in several forms, in which the highlands are laid down precisely according to the former maps from 1763. Half a dozen maps were published in London in the year 1783, delineating the boundaries of the United States; and these were succeeded by others in London and Paris within another year, for that purpose. It is needless to say, that they all agreed in that feature of the territory which now forms the subject of dispute, and the force of which is now designed to be done away by the dubious opinion of the King of the Netherlands.

To pass to a later period in the history of this subject,—in the British argument under the 5th article of the treaty of 1794, concerning the St. Croix, it was insisted that the northern limit of Nova Scotia was a line along the highlands, which divide the rivers that empty themselves into the river St. Lawrence, from those which fall into the sea. This argument directly identified the northern limit of Nova Scotia with the southern boundary of Canada, as before established. And taking this as a base, it sought to find the river St. Croix by *determining in the first place the north-west angle of Nova Scotia*, projected from the highlands. Another operation was considered and acknowledged as incontestable at the same time, viz. that the north line requisite to form this angle '*must cross the St. John of necessity*,'—but it would cross it, it was said, as an advantage to Great Britain, in a part of it where it ceases to be navigable, that is, above the Great Falls, 'almost at the foot of the highlands.' This effect was admitted at that day (in 1798) without any demur by Mr. Liston, then British minister in this country; and at that moment, no per-

son had ever thought of denying it. It resulted as a dead certainty from the physical formation of the country, for the reason given by the British agent. That was, that the sources of the St. John are to the westward, 'not only of the western boundary line of Nova Scotia, but of the sources of the Penobscot, and even of the Kennebec.' It may be added, although somewhat in advance, that in the argument delivered under the 4th article of the treaty of Ghent, relating to the Passamaquoddy Islands, by the British agent, it was again allowed, that the north-west angle of Nova Scotia, mentioned in the treaty of 1783, was the same as the north-west angle of Nova Scotia, as constituted in connexion with the Province of Quebec in 1763. The map evidence laying down the boundary, according to the treaty of 1783, between the United States and Nova Scotia and Canada, as that boundary is described in a note to Lord Harrowby in 1804, 'along the highlands bounding the southern waters of the St. Lawrence,' is continued by an unbroken succession down to the war, in 1812.

Even after the close of the last war with Great Britain, in 1815, we have the description of the boundary in question, in a work of so much authority and importance, as the '*Topographical Description of the Province of Lower Canada*,' by Colonel Bouchette, Surveyor-General of the Province, afterwards employed as a surveyor under the treaty of Ghent, and now the author of the large statistical work on the British dominions in North America, recently published in London. His description is so clear and conclusive, that we venture to quote it again. From the *high banks* opposite the city of Quebec, he describes a gradual ascent towards a *first range of mountains*. 'Beyond this range, at about fifty miles distance, is the ridge generally denominated the *Land's Height*, dividing the waters that fall into the St. Lawrence from those taking a direction toward the Atlantic ocean, and along whose summit is supposed to run the boundary line between the territories of Great Britain and the United States of America. This chain commences upon the eastern branch of the Connecticut river, takes a north-easterly course, and terminates near Cape Rosières in the Gulf of St. Lawrence.'

We might adduce also the splendid maps published by Colonel Bouchette at the same time, dedicated to the Prince Regent, intended to accompany his work, and to illustrate the description. We might also refer again to the work itself for

particular descriptions of several parts of the highlands, observed and sketched by Colonel Bouchette; but we fear to presume too far upon the patience of our readers, in pursuing this almost exhausted topic; and it would be only repeating a summary of them, which will be found in a former number of this journal.* It affords a picturesque representation of ridges or ranges of highlands, from the swell of land, in which the Connecticut river takes its rise two thousand feet above the level of the sea,—and whence continual falls mark the shorter descent of the Chaudière, to what may be termed the *trosachs* of the *Temiscouatu portage*, and thence supposed to continue to the Gulf of St. Lawrence. It is through this pass that the road from the St. John to the St. Lawrence, effected with great difficulty about the time of the conclusion of the American war, crosses the highlands; and here is established, by the concurrence of testimony of inhabitants on the Madawaska river with marks that still remain upon the earth, the southern boundary of Canada. This has been considered as fixed, between thirty and forty years. No process can be executed on this side of the pass from Canada. Several posts still appear, though latterly in a decaying state, which are known to have been placed there for the purpose of designating the boundary; and it is fixed as a fact, that *Mount St. Francis*, which *divides the waters* at the *Temiscouatu Portage*, has long been holden as being the southern boundary of Canada at that place. Practically, this would seem to put an end to all dispute.

The proper boundary of the United States, according to the description of the treaty of 1783, which is now somehow obliterated in the opinion of the King of the Netherlands, was recognised without a shadow of doubt till the close of the war in 1814. This last period itself is so pregnant with proof, at once of the continued conviction which existed on this subject, and of a policy, if possible, to reform it to meet an object of which war had disclosed the importance, and furnished the opportunity, that a production of text passages from British publications in the interests of our powerful antagonist, may here be not without some profit and instruction at this season. The most fertile repository of tracts and details on this topic, mixed up with spicy observations of its own, is the *Anti-Jacobin Review* and *True Churchman's Magazine*. One of the lead-

* Vol. XXVI. pp. 337-340.

ing topics in the volumes of that periodical, for the year 1814, is the necessity for settling *a new boundary* between the British colonies and the United States. This was the burden of both parts of the work ; and it was urged with all the energy that was imparted to the British military movements in this country, upon the successful termination of their contest with Bonaparte. The season for speaking was supposed to be peculiarly favorable, 'as,' it was said, 'a negotiation is about to open at Gottenburgh, and as a powerful British army is about to enforce our rights in America. All former treaties between the two countries are abrogated and annulled by the existing war, and the American Government has lost every claim upon the favor, affection, and forbearance of Great Britain, by her base and perfidious conduct, in attacking us at a time when we were fighting for the freedom and independence of Europe. Our ministers, therefore, must be disposed to derive every legitimate advantage from the success of our arms, &c.' The first subject to which those reviewers allude, in this immediate connexion, as of primary importance, is, 'an exclusive privilege to be secured to our own colonies in North America, to supply our West India Islands with all those necessary articles, which they, heretofore, chiefly derived from the United States ;' and secondly, they state 'the *most* important object to be secured by a treaty of peace, is the settlement of *a new boundary* between the two countries.' Afterwards, on another occasion, they recommend the advantage of retaining possession of the islands in Passamaquoddy Bay for the benefit of the trade, navigation, and fisheries of Nova Scotia and New Brunswick ; and express the hope 'that whilst we have such a naval force on that station, and such an army to co-operate with it, *Penobscot will be taken possession of, and a new boundary line established between New Brunswick and the United States.*'

For detailed information on this topic, reference is made to *Knox's Extra Official Papers*, published by *Debret*. But the most pertinent and expressive text for these useful remarks is contained in a production entitled, 'A compressed view of the points to be discussed in treating with the United States of America,' with two maps, by J. M. Richardson, published the same year ; from which we borrow the following extracts, as we find them making a conspicuous figure in the foreground, in the work from which we have quoted.

‘ In concluding a treaty of peace with the United States, not only ought the main feature of the war, the inviolate maintenance of our maritime rights, to be kept in view, but the scarcely less important object, the preservation of the British North American colonies, ought not to be overlooked. To secure this last, it is requisite to advert to one grand point, the necessity of the establishment of a *new line of boundary*, between the British and the American possessions,’ &c. In regard to the boundary line, as supposed to be fixed in 1783, that writer remarked, that ‘ the framers of that treaty on the part of Great Britain, instead of insisting, according to their instructions, on the river Penobscot being the boundary between New Brunswick and the United States, abandoned that point, and allowed the line to be carried as far as the river St. Croix, giving up an extent of sea-coast of nearly fifty leagues, *though the Penobscot was the utmost northern point to which the limits of the New England States were before supposed to extend.* Another special result is then pointed out as proceeding from the treaty determination of boundary, viz. ‘ that there is actually no readily practicable communication between Lower Canada and New Brunswick, *without crossing a part of the American territory*, now called the Province of Maine.’

Indeed this strong and well informed production so distinctly marks out and emphatically dwells upon all the subjects, that were afterwards assumed on the part of the British negotiators at Ghent, that it can be seen by a summary of the points which the writer undertakes to deliver in charge to the British plenipotentiaries to be insisted upon, how well prepared they were to take high ground for their demands. We omit those which go to exclude us from trading with their East India possessions, and to extinguish our ‘pretended right’ to the north-west coast of America ; and pass over a prohibition to include the Floridas in the Union, and a requirement to be made of the cession of *New Orleans*, to ensure a due share of the navigation of the Mississippi ; these, with the refusal of any commercial treaty with this country, having less immediate bearing upon the policy of the negotiation in respect to this frontier. The summary of leading propositions, is as follows.

First, a boundary line throughout the whole extent of North America, where the British possessions and those of the United States come into contact, *keeping in view that Nova Scotia and New Brunswick be restored to their ancient limits*, and a free communication with Canada be obtained, without passing

through the United States. ‘*If we cannot get to the Penobscot, at least let some route or line be drawn, by which we may be enabled to have a free communication between Canada and Nova Scotia.*’

Secondly, a new boundary line for the Indian territory ; the integrity of this boundary and the independence of the Indians to be guarantied by Great Britain ; the Americans to be excluded from the navigation of the St. Lawrence, and of all its tributary lakes and waters ; and no forts or military posts to be erected by the Americans in the Indian territory, or on the boundaries or jurisdiction within these limits ; and a navigable part of the Mississippi to be brought within the Canadian territories.

Farther, the Americans to be excluded from the fisheries on the coast of British North America ; especially those of Labrador, Newfoundland, and the Gulf of St. Lawrence. ‘The third article of the treaty of 1783, which admits them to take and dry fish on the shores of these colonies, ought to be utterly abrogated, and every vestige of its existence taken away. Improvident and impolitic in the outset, experience has shown that it is much more injurious than might, on a superficial view, be supposed. ‘That the Americans were enabled thereby to carry our own fish to the West Indies, and derive great part of the advantages of a trade which nature points out as belonging to us, is too well known.’ In addition to this, ‘the Americans to be excluded from all intercourse with the British West India Islands.’ A barrier had existed, which obstructed the advantages to be derived from a true line of policy. This barrier consisted in allowing the Americans to supply the West India Islands with timber, staves, fish and provisions. The war had put an end to this impolitic system. Earnestly was it to be hoped, that experience would open their eyes and induce them to revive, in all its vigor, the navigation and colonial systems of England, to give every species of encouragement to the colonies, and to prohibit in future all intercourse between the United States, and the British West India Islands.

Of these objects, forming the bulk of what ought to come under discussion, it was the aim to produce a conviction of the essential nature, to the prosperity and existence of the British colonial possessions in North America. The persons to be employed as British negotiators should go *prepared with an*

advantageous line, distinctly marked out, the adoption of which should be a *sine quâ non* in the negotiation. 'The tone of firmness, of decision, of *dictation*, on our part, (we quote the language then used) is the only one suitable to our own dignity, and to the relative circumstances and situation of the two countries.'

Qui Mare teneat, eum necesse rerum potiri !

These last passages open a fruitful and not entirely pleasant source of recollection and reflection. They cast a long retrospect upon the far receding period of our colonial condition. They carry us back to the season of 1763,—when, after the joint exertion in arms, between the strength of the mother country and her children on this side, the French empire gave way upon this continent, and when our fathers saw the great materials of that conquered empire re-combined upon our back in a new form, making a new frontier from south to north, by the sources of the streams flowing to the Atlantic. They rehearse to us the preface of the royal proclamation of that year, reciting the extensive and valuable acquisition in America, lately secured to the crown, by the definitive treaty of Paris, and the advice of the privy council thereupon, 'being desirous that *all our loving subjects, as well of our kingdoms, as of our colonies in America*, may avail themselves with all convenient speed, of the great benefits and advantages, which must accrue therefrom to their *commerce, manufactures and navigation*.' It remembereth us even further back, of the days of Sir Josiah Child, and the close systems of our mother country, devised originally against the free and virtuous republic of Holland, and finally transformed and fitted to us, as finely as though they had been cut out for us. It gives us a lively and rather racy relish of those venerable principles of colonial monopoly, by which our industry was trained in prudent directions to promote the prosperity of the mother country, and our native fondness for the arts was encouraged to confine itself to the honest and peaceful pursuits of husbandry, leaving our workshops to be kept in Europe. It reminds us of a certain act entitled an act,

'To restrain the trade and commerce of the Province of Massachusetts Bay, and New Hampshire, and colonies of Connecticut, and Rhode Island, and Providence Plantations, in North America,

to Great Britain, Ireland, and the British islands in the West Indies; and to prohibit such provinces and colonies from carrying on any fishing on the banks of Newfoundland, or other places therein mentioned, under certain conditions and limitations.'

This was the same act, it may be observed, by which it was established,

'That *the river which emptieth itself into Passamacadie or Passamaquadda Bay, on the western side*, and is commonly called or known by the name of *St. Croix* river, be held and deemed for all the purposes in this act contained, to be the boundary line between the provinces of Massachusetts Bay and Nova Scotia.'

If the monopoly of this continent was played for as a stake, between England and France, and the provinces had to pay the price of the contest, and to see their own frontier the forfeit, not of defeat, but victory, still they were not deprived of the freedom of commerce in this hemisphere, and had the same prescriptive liberty of carrying their products to the West Indies, that they had of a partnership in the fur-trade or the fisheries. We were the denizens of all the English empire upon our coast, from the equator to Labrador. In the natural connexion of this important subject, we cannot forbear to quote the doctrine of the venerable John Adams, to whom New-England is so much indebted for the preservation of her most valuable interests. *We considered the treaty of 1783, he said, as a division of the empire. Our independence, our rights to territory and to the fisheries, as practised before the Revolution, were no more a grant from Britain to us, than the treaty was a grant from us of Canada, Nova Scotia, &c. The treaty was nothing more than mutual acknowledgments of antecedent rights.* In defence of a portion of those rights, particularly the fisheries, New-England, and especially Massachusetts, had done more than all the rest of the British empire. In the various projected expeditions to Canada, not defeated through their negligence, in the conquest of Louisburgh in 1745, in the final conquest of Nova Scotia, New-England had expended more blood and treasure, than all the rest of the British empire. In regard to that portion of these rights, most intimately connected with our limits, namely, the fisheries, we urged upon the British ministers, he continued, that it was the interest of England herself, that we should hold fast all those rights, because all the profits which we make of them, went

regularly to Great Britain, in gold and silver, to purchase and pay for their manufactures ; and that if it was in their power, which it was not, to exclude us from, or abridge those rights, they would themselves experience the consequences of their own unwise policy. This was a strain worthy at the time of him, who has been well styled ‘the noblest Roman of them all ;’ and although some things have already taken a different turn, and other things have acquired a steady and determined direction in fulfilment of these patriotic and prophetic suggestions, we have no occasion to lose sight of them, in remarking the policy that has been pursued by Great Britain toward the United States. A most remarkable development of this policy took place in the negotiations at Ghent,—of which the question now pending is a legacy.

The negotiations, which it was the intention to open at Gottenburgh, being removed to Ghent, the American envoys were surprised by a set of demands, as the conditions of peace, which went very far to carry the United States back to the era before the Revolution. These demands were, first,—for a *general revision of the boundary line between Great Britain and the United States* ; the establishment of the Indian possessions, as a permanent barrier between the British dominions and the territories of the Union ; the lakes from Lake Ontario to Lake Superior to be the proper frontier between the two countries ; from Lake Superior, the line to be pursued to the Mississippi ; and on the north-east, a ‘*variation of the line of frontier, by a cession of that portion of the District of Maine, in the State of Massachusetts, which intervenes between New Brunswick and Quebec, and prevents their direct communication.*’ The United States were further required to relinquish their right to the Lakes, and to disarm their force on the waters and dismantle their fortifications on the shores of those lakes, within a limited distance, while the British were to retain the right to a military possession on their side of both. In addition to these demands, besides the islands of Passamaquoddy, which we were to give up, we were also to be deprived of the right to the fisheries, and of drying our fish upon the shores within the limits of British sovereignty. These positions seem to have been assumed upon the ground,—which on some points was positively taken,—that the treaty of 1783 was repealed by the declaration of war ; leaving us only to negotiate upon the footing of our original declaration of independence, so far as the success-

ful result of the former war had not been impaired by the military vicissitudes attending the latter. Finally, the British plenipotentiaries proposed the *uti possidetis*. This new pretension was brought forward, as the American envoys wrote home, 'immediately after the accounts had been received, that a *British force had taken possession of all that part of the State of Massachusetts, situated east of Penobscot river.*' The British negotiators were in a constant state of communication with their own Government, referring to its consideration every note from our envoys, and waiting a return before they transmitted their answer. By the time when the negotiations, on the principle of *uti possidetis*, should be brought to a close, the success of the expedition destined to Louisiana, might have been determined; and in possession of Penobscot upon one side, and New Orleans upon the other, the British Government might have gone far to execute the original project of 1763.

This proposal of the *uti possidetis* was stripped at once, by the American Ministers, of its diplomatic circumlocution; and they met it by a direct denial, that they had any power to cede the territory of the United States. To be more distinct, they referred to their former note in reply to the broad demand of a new boundary, in which they say, they 'perceive, that under the alleged purpose of opening a direct communication between two of the British Provinces in America, the British Government *require a cession of territory forming a part of one of the States of the American Union,*—and that they propose, without purpose specifically alleged, to draw the boundary line westward,' &c. 'They have no authority,' they answer, 'to cede any part of the territory of the United States; and to no stipulations to that effect will they subscribe.'

It was to this great object, namely, to obtain a new demarcation of the territorial limits of the United States, and a curtailment of their rights on this continent and the adjacent element, that the great efforts of the British negotiators were directed. This was the purpose which they approached, under the affectation of affording protection to the Indians against our resentment; the accusation, of our design to conquer Canada, and of the immorality of our acquisition of Florida; and the assertion, of the flaming proof of our insatiable appetite, arising from the purchase of Louisiana. Hence, also, the allusion to equivalents and offers in other quarters, and all the diplomatic expedients made use of to compass this purpose. Why, at

least, his Majesty should be 'precluded from availing himself of his means to retain these points, which the valor of British arms might have placed in his power, because they *happened to be situated within the territories allotted under former treaties to the Government of the United States*,' his Majesty's plenipotentiaries professed themselves entirely unable to conceive. These records of the negotiations at Ghent are not revived, however, to show the similarity to the project of an Indian barrier, presented by France, and repelled by Mr. Pitt, in the negotiations at the termination of the war of 1756, nor the broad and glaring analogy which they exhibit to the policy of the proclamation of 1763. It is for the *distinct admission they contain, of the proper construction of the limits of our territories, and particularly of Massachusetts then, now Maine, according to the allotment of former treaties.*

With respect to that part of the boundary of the District of Maine which had been brought into view, the American envoys had never understood that the British plenipotentiaries, who signed the treaty of 1783, had contemplated a boundary different from that fixed by the treaty, and which required 'nothing more in order to *be definitively ascertained, than to be surveyed in conformity with its provisions.*' This subject not having been a matter of uncertainty or dispute, they said they were not instructed upon it, and had 'no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent.'

The treaty of Ghent neither raised nor recognised any doubt about the geography of the highlands. It gave no new description of them; but adopted the definition that had been in known and constant use for fifty years, and always understood and applied in one and the same manner. It left no more uncertainty about the proper existence and character of these *highlands*, than it did respecting *Connecticut river*, or the *astronomical north*. The lines had never been surveyed by any mutual proceeding between the two countries. Two points only had not been ascertained;—*where* was the *north-westernmost* source of *Connecticut river*; and where was the point at which a line drawn thence along the highlands, would be intersected by a line drawn due north from the St. Croix? The *north-westernmost* source of *Connecticut river* was to be determined in the same manner, that the *due north direction* from the St. Croix was. Both depended upon the direct ap-

plication of scientific principles. The *point* in the highlands, which should be met or made by a meridian from the monument, had not been ascertained. A survey could then be made, by which the limits of each country would be marked out. It is mentioned by the King of the Netherlands, that Great Britain had once refused a proposition of this kind. She did not refuse it now ; and nothing remained to be done, but to carry the provisions into honest and faithful effect. The import of it is correctly exhibited in the following paragraph, from the Report of the Committee of Public Lands, in the Legislature of Massachusetts.

‘ It results from the terms of these articles, and leaving out of view that part of the fifth relating to the north-westernmost head of Connecticut river, and the boundary thence to the Iroquois, which is not material to the present purpose, that the duty which devolved upon the Commissioners, appointed under the fifth article, was to ascertain and define that point of the highlands lying due north of the source of the river St. Croix, which was designated, in the former treaty, as the north-west angle of Nova Scotia, and to cause that part of the boundary line, between the dominions of the two powers, which extends from the source of the river St. Croix, due north to the above mentioned north-west angle of Nova Scotia, thence along the said highlands, which divide those rivers which empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the north-westernmost head of Connecticut river, to be surveyed and marked according to the provisions of the treaty. No authority is given to the Commissioners, to ascertain and determine the respective positions of the highlands, or of the source of the river St. Croix. Both these are supposed to be known. The position of the source of the river St. Croix, had in fact been determined by a special convention, and no question had ever been raised as to that of the highlands, which was laid down in all the maps, and described in a variety of official documents, emanating from the British Government, as stretching from the western extremity of the Bay des Chaleurs, along the south side of the river St. Lawrence, at a distance from it of twenty or thirty miles. The duty of the Commissioners was, therefore, as has been already said, to ascertain and determine the point where a line, drawn due north from the source of the St. Croix, strikes the highlands, and to cause the boundary line, which, according to the treaty, was to run westerly from that point along the highlands, to be surveyed. Should the Commissioners differ upon any of the matters referred to them, they were to make report to their

respective Governments of the points on which they differed, and an arbiter was to be appointed, who was to decide on view of these reports, the points of difference therein stated.'

The existence of these highlands forming the northern boundary of Maine, is assumed in the Report as a matter of fact, of public notoriety, established by the uniform evidence of maps, and by the practice and authority of the British Government. A graphic description of the character of these highlands, from the best knowledge that exists of them at the present period, is given in the following passage from a letter of Mr. Preble, one of the agents of the United States, and late Minister at the Hague, to Mr. McLane, then Minister at London, published in an Appendix to the pamphlet, prefixed as a title to this article.

'On the southern border of the river St. Lawrence, and at the average distance from it of less than thirty miles, there is an elevated range or continuation of broken highland, extending from Cape Rosières south-westerly, to the sources of Connecticut river, forming the southern border of the basin of the St. Lawrence, and the *ligne des versants* of the rivers emptying into it. The same highlands form also the *ligne des versants* of the river Restigouche, and its northerly branches emptying into the Bay des Chaleurs, the river St. John, with its northerly and westerly branches emptying into the Bay of Fundy, the river Penobscot, with its north-westerly branches emptying into the Bay of Penobscot, the rivers Kennebec and Androscoggin, whose united waters, absorbed in the river Sagadahock, empty through it into Sagadahock Bay, and the river Connecticut emptying into the Bay, usually called Long Island Sound. These Bays are all open arms of the sea or Atlantic ocean, are designated by their names on Mitchell's map, and with the single exception of Sagadahock, are all equally well known, and usually designated by their appropriate names. The river St. John, several branches of which take their rise in these highlands, from thirty to one hundred and twenty English miles west of the line drawn due north from the source of the St. Croix, pursuing a south-easterly course, crosses said line, then suddenly turning, runs nearly parallel to it, when, resuming its former direction, it winds its way through more than three hundred miles from its source to the ocean; and in its course, besides its own rapids and those of its tributaries, precipitates itself over one fall of eighty feet in height. The waters of the St. Lawrence are tide waters, and of course on a level with those at the mouth of the St. John. As therefore the highlands, or *point de portage*, where the tributaries of the St. John take their rise, approach the St.

Lawrence within thirty English miles, it necessarily results from the nature of things, that the country on the Atlantic side must continue to rise till it reaches the dividing ridge or highlands, and then suddenly fall off toward the river St. Lawrence. But we are not here left to inference. It is proved by actual observation and computation, that the average absolute height of this "*ligne des versants*" approximates nearly to two thousand feet.'

The highlands where the line passes, at the Temiscouatu Portage, is thirteen hundred feet above the level of the sea. That at which the north-west angle of Nova Scotia is found, is a table of considerable elevation, and there the waters find a descent from the south into the river St. Lawrence, from the west into the Bay of Chaleurs, and from the north and north-west into the Atlantic. In this part of the country, where the proper angle is found, are springs of the St. John, and Restigouche, and the Metis. From similar highlands in Scotland, more like table-land than mountains, take their rise the sources of the Tweed, and the Clyde, and the Annan; and a more natural or appropriate position for the north-west angle of Nova Scotia,—divided by the Bay of Chaleurs from Canada,—could hardly be supposed. Thereabouts it was found and considered to be in 1798; and there was not even a question of fact existing since that period, but only a treaty process instituted to ascertain the *point*.

This elevation of the land at the source of the river Metis, is greater than that of Mount St. Francis; and viewed from the St. Lawrence, the ridge of highlands probably presents a conspicuous and continuous appearance. The term *hauteur de terre*, is one used in Canada, and applied to this ridge, as the term *highlands* is used in Scotland. This equivalent expression was first employed to mark off the Canadian boundary, from New-England first, and finally from *Nova Scotia*, where the application of it would have an equal felicity; and it may be asserted as a fact, with entire confidence in its integrity, that no person in America ever doubted that this boundary of highlands, distinguished and established by the treaty of 1783, ran north of the river St. John,—which is the only question,—till since the treaty of Ghent. We may safely challenge a contradiction.

Nevertheless, it appears that the situation of these highlands was the principal point, upon which the British and American Commissioners happened to differ. Upon this subject the

Committee of the Massachusetts Legislature remark, 'that it certainly was not the intention of the parties to the treaty of Ghent, that any question should be made. When the British commissioners advanced the extravagant and preposterous pretension, that the highlands were situated in a widely different region in the State of Maine, the Committee say, the American Commissioners might perhaps with propriety have declined to negotiate upon this point.

'Instead of this, however, they undertook to refute the British argument, and finally consented to refer it to the arbiter. The King being authorized to decide upon all the questions specified in the statement, was of course justified in considering the situation of the highlands as one of the points referred to him; *and had he given a decision in favor of the British pretensions, the Government of the United States would have been bound to acquiesce in it, except so far as it might have been considered originally null and void, for want of any constitutional power in the Government of the United States, to authorize the submission to a foreign arbiter of the question so decided.*

'The King, however, gave no decision upon this or any other question relating to the north-eastern boundary. After stating the question to be, as above represented;—what is the north-west angle of Nova Scotia, and what are the highlands which divide the waters that empty themselves into the river St. Lawrence, from those that fall into the Atlantic ocean?—his Majesty proceeds to recapitulate at considerable length, the arguments which have been urged by the two parties, in favor of their respective pretensions, compares their forces, and finally concludes, that there is not sufficient evidence on either side, to justify a decision.'

It may be fitting to furnish some further account than we have yet seen, of the singular operations, by which the mind of the arbiter has been guided to this strangely negative result. We might be spared the perplexity of following out a number of passages, literally leading to nothing, if it were not rather interesting and curious to see by what expedients it was practicable to avoid a decision. Besides being abundant and diversified in its details, the opinion is somewhat curious and complicated in its application of principles. It employs a scrupulous and subtle species of analysis. It carries with it an aspect of novelty in its prevailing ideas, that might be rather refreshing on such an antiquated topic; and it contains, there can be no sound reason for not saying it, a very singular mixture of mystifications and sophistications. Altogether, it is one

of the most remarkable pieces of metaphysics that have been produced, in matter of law or fact, in modern times. Although the method made use of may be understood by those who are acquainted with the subject and familiar with the case, it can hardly be mastered without considerable study, and also requires the aid of the artificial map A. Difficulties present themselves in the official translations, which are not immediately removed by recurrence to the original; and on the whole it is a document of a rather *unique*, and anomalous description. But it will assume its place in the Annual Register of 1831, and find its way to the public understanding.

The first step in the process, adopted by the arbiter,—and which, properly improved and pursued, it is easy to perceive, goes far to accomplish the whole result, is to dispense with the quality of *altitude*, as constituting a characteristic of the highlands, established by the treaty. It is assumed that ‘the character more or less hilly and elevated of the country,’ through which the line may be drawn, affords no criterion :

Again, that the treaty of Ghent institutes a proceeding to ascertain the limit by direct examination upon the spot, which is incompatible with the idea of a *definite* or *historical* boundary :

That the descriptive north-west angle of Nova Scotia, being itself the desideratum, has no proper existence :

That *the nature of the ground*, east of the north-west angle of Nova Scotia, had not been indicated in the treaty,—nor the number of degrees to form that angle given :

That, furthermore, there is nothing to be derived from the delimitation of the ancient British Provinces on this point, as the boundary line, west of the St. Lawrence, through the lakes, did not comport with the ancient Province charters :

And that, stripping the question of these inconclusive circumstances, namely, the nature more or less hilly of the ground, and the ancient delimitation of the Provinces, &c. it resolves itself into this,—that is to say, what is the ground, no matter (*n’importe*) whether hilly and elevated, or not, which, westwardly from the line of the St. Croix, divides the rivers, which empty themselves into the St. Lawrence, from those which fall into the Atlantic ocean.

Putting the lands, whether high or low, on both sides of the St. John, to the north and south, upon the same level, so long as waters flow from them in different directions, and divesting

them of every circumstance, to distinguish the one or the other by any prescriptive discrimination, the next step is to dispose of the rivers, that are found to flow from the reputed highlands.

The rivers St. John and Restigouche, in the first place, are cashiered by the arbiter, on the ground, that it would not be safe to include them in the description of rivers, falling into the Atlantic ocean ;—these rivers falling into the Bays of Fundy and Chaleurs ;—that *these alone* are the rivers falling into the Atlantic ocean at all, which the boundary line claimed by the United States divides immediately from rivers, emptying themselves into the St. Lawrence ;—and that this boundary line does not even immediately divide the *rivers that empty themselves into the river St. Lawrence*, from the St. John and Restigouche, but only from *rivers that empty themselves into the St. John and Restigouche* ; so that, to reach the Atlantic ocean at last, each set of streams, separated from the St. Lawrence, requires two intermediate communications, viz. the one the river St. John and the Bay of Fundy, the other the river Restigouche and Bay of Chaleurs.

But there is a still more effective ingredient employed, in order to produce a proper solution of this problem ; and that seems to be, that the highlands which divide the rivers flowing into the St. Lawrence from those falling into the ocean, may as well divide them *mediately* as immediately ; so that, in this sense, it becomes entirely indifferent on which side of the St. John the supposed highlands are situated, and that one set will answer the purpose of the treaty just as well as the other. The river St. John is thus substantially extracted for all purposes from the field of inquiry. This river is put, in fact, upon the same footing with the highlands. It is considered immaterial, whether those highlands have any extraordinary elevation. It is immaterial, whether the St. John flows on one flank of them or the other ; and to avoid the existence of the north-west angle of Nova Scotia, both the elements in the treaty description, namely, the *height* of lands, and the circumstance of their *dividing* rivers, seem to be rendered nugatory.

Striking the St. John from the scene, reducing the highlands to a level, and expunging the southern boundary of Quebec, the north-west angle of Nova Scotia sinks into a shapeless ruin,—‘*Baron and Baillie, and Saunders Saunderson,—a’ dead and gane !*’ It leaves the description of the treaty of

1783, a mere *rasa tabula*. It converts the whole space of country,—from the Chaudière to the river Metis, embracing the Ouelle, Kamouraska, Du Loup, Verte, Trois Pistoles and Rimousky, falling into the St. Lawrence on one side, that is, between those streams to the north, and the Penobscot, Kennebec and Androscoggin, the whole breadth of Maine, to the South, for all purposes of the treaty,—into *table land*. The face of the country is, in fact, discharged from all features of a sensible character; it is all indefinite. The original description is neutralized; there is no firm or distinct tract of ground remaining; the chemical process has been successful. The treaty description of the territory is cancelled, and becomes a mere blank.

In thus exercising this sovereign faculty of going into a thoroughly new and artificial view of the subject,—as though there were no pre-existing rules or principles of determination in regard to it,—the arbiter carefully discards all that is historical. In this respect, therefore, the description in the proclamation of 1763, the Quebec Act of 1774, and the successive commissions to the governors of Canada,—go for nothing. It is not that the negotiators of 1783 adopted so much any ancient delimitation of the Provinces in that quarter, as that they employed a set of terms, which, by their being made use of to define the principal provincial boundary in that direction, had acquired *a known, determinate, and practical signification*. If there had been no evidence on this subject before the arbiter, and he had been left entirely to the lights of his own mind, he might have been justified in viewing it more as an open question. But he was not thus at liberty. In the first commission that was issued to Sir Guy Carleton as governor of Quebec, in 1786, the identical description of ‘*highlands*, which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the Atlantic *ocean*,’ was used, which was employed in the treaty of 1783. It could not be said, that the treaty paid no regard to the ancient delimitation of the British Provinces, since Nova Scotia was expressly named, and the western boundary of that Province, terminating at its north-westernmost point in those highlands, was adopted as the eastern boundary of the United States.

With respect to the inference of the arbiter, that the northern boundary of Maine is not to be regulated by the southern boundary of Quebec, on the ground that the limits of the colo-

nies were not adopted as the limits of the United States, if it were of any importance, we should be glad if his Majesty would inform us, what the limits of the colonies were at the declaration of their independence? Should we go by their charters to the Pacific, or be governed by the acts of 1763 and 1774, intended to bear mainly upon what are now the Middle and Southern States of the Union? Does it follow, in his estimation, that because the operation of those provisions was not acquiesced in according to all their extent, that therefore their expressions are to be without effect, when they are literally recited and exactly applied? Because the lakes were made the boundary from the Iroquois to their farthest extremity in the wilderness, does it necessarily vitiate and destroy that portion of the description in these acts, which applies with perfect precision from the Connecticut and Chaudière to the Bay of Chaleurs? The logic of the arbiter implies an acquaintance with historical circumstances, while all his deductions are made against the authority of historical documents. Every thing is made to tell one way in his philosophy. What he has been able to do in the actual manner in which he has gone to work, is not in itself so wonderful,—because he has absolutely been able to do nothing,—as the dexterity with which he has attempted to divest the subject of all its real merits, arising from the character of the country, the demarkation of Canada, and the whole class of facts, geographical and historical, combined, which come down to us as traditional truths, and are established under the most authentic sanctions. Supposing, if it were possible, the highlands to have been hypothetical, still they had an unquestionably admitted existence, the intention was capable of being perfectly ascertained, and the delimitation which was *designed* could have been conclusively demonstrated. The phrase ‘Atlantic ocean’ was *genus generalissimum*. It embraced all but the river St. Lawrence to the south and east. A verbal criticism was raised in the British statements, on the word ‘sea’ having been used in the proclamation of 1763, as being the more comprehensive term, but the arbiter does not notice this slender distinction. If any of the original traces were obliterated, or the monuments referred to not to be found, it does not follow that the direction of the treaty was to be disregarded and abandoned as entirely ineffectual, so as to substitute a totally arbitrary definition, or rather a merely arbitrary division.

The arbiter, looking into historical documents for a very limited purpose, finds that the *north-west angle of Nova Scotia* was at one time (1755) on the bank of the St. Lawrence; and at another (1779) at the source of the St. John. Now it is quite certain, that there never was any such thing as the north-west angle of Nova Scotia in existence until 1763. When the northern boundary of that Province was considered as resting on the St. Lawrence, the arrival of the north line from the St. Croix never gave it the denomination of an angle. The north-west angle of Nova Scotia was never formed, till the Province of Quebec was set off. To look on Mitchell's map for the latitude of that angle, as coinciding with the St. Lawrence, is not merely an anachronism, but an absurdity. Mitchell's map was laid before the arbiter, because it was known to have been before the British and American negotiators, in forming the treaty of 1783. But to infer from that map, that there was any assignable north-west angle of Nova Scotia upon the latitude of the river St. Lawrence, different from that designated by the treaty, is preposterous. The identical Mitchell's map, which was used at Paris in making the treaty, is still preserved, and exhibits traces with a pencil, since that period apparently passed over with a pen, showing where the angle in question was understood at that time to be found, and intended to be fixed. But as there was no question when that map was made use of under the treaty of 1794, except as to the St. Croix, it was not deemed of any importance to obtain attestation to the truth of these marks, and was deferred, until by the decease of Mr. Adams, and the infirmity of Mr. Jay, it became impossible.

In the conferences of our negotiators at Paris in 1783, it appears from the testimony afterwards taken, that the easterly boundaries of the Province of Massachusetts, it was considered, ought to constitute those of the United States! It seems that Mr. Jay supposed the St. John to be the proper eastern limit, and that it was so considered by respectable opinions in America. But it was replied, that the St. Croix was the river mentioned in the charter of Massachusetts, and therefore it was adopted. This was a mistake. The St. Croix was not mentioned in the charter. It is evident, that the Continental Congress in 1779 considered the chartered boundaries of Massachusetts Bay as extending to the St. John. That river, the St. John, had, as a committee of Congress say in

1782, before been called the St. Croix. The territory called Sagadahock had been considered as extending to the St. John, as the limit of the *place* called 'St. Croix, next adjoining to *New Scotland*.' While the dispute about Acadia was pending, Nova Scotia was placed on the east of the St. John, and that river was called also, as has been mentioned, the *Clyde*. The error of the old Congress, therefore, on this subject, was not entirely without occasion.

The circumstance is adverted to, because ideas are still understood to exist to the same purpose, and because the King of the Netherlands has availed himself of it to find a north-west angle of Nova Scotia at the furthest source, he probably means, of the St. John. This is a perversion of the fact, if not of the opinion, upon any other principle than that the St. John was properly regarded as the St. Croix. But the opinion that prevailed in Congress is best explained by the report of the committee in 1782, which refers to Bowen's map for authority or illustration, and that map places the north-west angle of Nova Scotia on the highlands, at the source of that branch of the river St. John, which is called the Madawaska. Five different maps, published in London, in 1765, 1771, 1774, 1775, as is mentioned in the first production at the head of this article, place the angle on the highlands, at the head of the same branch. But this is now immaterial. Dr. Franklin and Mr. Jay assented to the opinion of Mr. Adams, that the St. Croix was the river in the charter; and the St. Croix on Mitchell's map was selected. Mr. Adams and Mr. Jay agree that the boundary lines of the United States were marked out on that map,—and who can doubt, where the line in dispute along the highlands was drawn?

The little differences elicited between the authorities of New Brunswick and Canada, alluded to by the arbiter, resulted in fixing the southern limit of Quebec at the place mentioned on Mount Francis, near the lake Temiscouatu. This was before the treaty of 1794; after this, and the determination of 1798, we hear no more of them.

The claim of the American Congress to the river St. John inspired the arbiter with an idea of equitable compensation, which he was not able, however, to work out quite to our advantage, or his own contentment. The committee of Congress, it seems, considered the space between the Passamaquoddy and St. John as 'the place called or known by the name of

St. Croix,' in the Duke of York's Grant,—and so part of Sagadahock. By the surrender of both banks of the St. John for a considerable way from its mouth, and the intervening tract between the St. John and St. Croix bordering on the sea, the arbiter is of opinion that Great Britain did not obtain a territory of *less value*, than if she had accepted the St. John as her frontier,—granting to the United States, on that ground, the territory claimed by them to the north of the St. John. Still, he considers that the value of concession to Great Britain would be so much impaired by this compensation to the United States, that he cannot conceive what could have induced Great Britain to consent to it. He therefore comes to the conclusion, that he cannot confirm this equation to the United States, without violating the principles of law and equity; on the other hand, he comes also to the conclusion, that he cannot well refuse to establish it without pressing on the same principles, yet,—although it must be confessed, not without obvious reluctance and regret,—he does come to the conclusion by the aid of other circumstances, that 'to him that hath shall be given, and from that hath not shall be taken away even that which he hath.' The off-set, thus allowed in his view by the treaty, is resumed by this result. His mind has been too much familiarized with the affairs of Europe, however, for the last forty years, to disregard the idea of some indemnity. He had received one himself at the hands of Bonaparte. He had a large one from the Congress of Vienna, which he has now lost, and he is now disputing the arrangements about Limbourg and Luxemburgh, upon the same principle. It was natural for him to cast about for something of this kind, to relieve the wounded principles of right and equity, by providing somewhat in the shape of an equivalent in some other quarter; and, at the same time, furnish a specimen of his proposed method of adjudication.

In preparing this, he was not without an intimation of what was practicable and acceptable in the estimation of the British Government, from the negotiations at Ghent; in which it was said, that the demand of a cession of the portion of the District of Maine in question, left it 'open for the American plenipotentiaries to demand an equivalent for such cession, either in frontier or otherwise.' The British statements and evidence indirectly afforded the arbiter information, that the United States had begun to build a fort at Rouse's Point on Lake

Champlain, which, on a true survey of the forty-fifth parallel of latitude, would be excluded from their territory ; and insinuated, that this was all the interest the United States had in that survey. Neither the statements, documents, or evidence exhibited on the part of the United States, contained the slightest notice of this circumstance ; and it was not touched in the convention. By adjudicating this place,—to which we did not pretend to set up a shadow of title, unless it was found south of the true line,—to the United States, he proposed a mode of decision, which, if not objected to, would serve equally well in both cases.

We will look at this matter a moment. Admitting, that territory is the most proper measure of compensation for territory, if the arbiter could go so far out of his way as to award us Rouse's Point, to save an outlay, which may be considered as lost to us at any rate,—if he could depart from so fixed a rule as a parallel of latitude, where there was no room for any perplexity about the courses of rivers,—if he could thus travel entirely out of the field of territory allotted to us by the treaty of 1783,—why could he not as well have applied the remedy to that quarter of the country, upon which he was obliged, in his own expression, to inflict the wound ? Why, if the negotiation and exchange supposed by him to have been made in the treaty of 1783 were to be revised, so as to take back the tract to the north of the St. John, should there not have been a proportionate restoration of that which Great Britain had obtained, to the west of that river ? We put it simply upon the principles of right and equity, which the arbiter is afraid to wound by his opinion. We do not say, that we did not receive a perfect equivalent for the portion which we parted with, upon his notion, at the peace of 1783 ; but that depends upon our being able to hold it ; and it is proved, that the St. Croix, which was marked out for us upon the rule which the arbiter adopts, namely Mitchell's map, would have given us all the river St. John, from the mouth of Eel river, at the bend above Fredericton. Supposing that he could not have given us back to the Magaguadavie, he might have restored to us the territory to that part of the St. John, where it would have been touched by the meridian from Mitchell's St. Croix. Nay, he could not possibly have wandered farther out of his sphere, than he did in carving us out a portion of Canada, if he had assigned to us the islands of Grand Menan, and Campo Bello.

The latter is properly a part of the promontory on which the town of Lubec is situated, and the other the largest of a group of islands immediately abreast. Not that we believe that any operations of this kind would have been within his competency; they would not have been less so than what he has done; and if the illustrious arbiter could exercise the utmost power, not of a judge, but of a Chancellor, in reforming the terms of the contract between the parties upon its original principles, there would have been no injustice in giving us the benefit of the same retrospection. If it were out of his power to conceive what could have influenced the Court of London to concede the full value for an equivalent, which Great Britain is admitted to have received, is it right, upon principles of mere equity, that she should retain the consideration, and still be allowed to recover back the territory she has parted with for it?

These considerations, however, we are sensible, have no relevancy in regard to the proper question of the authority of the arbiter; they only serve to shadow out the excessive irregularity of his proceeding. We may go farther, and acknowledge that there is no sort of foundation for this fancy of the arbiter, dignified into some consideration by being adopted by him, of there having been any balancing of equivalents on this quarter at the treaty of 1783, in the manner which it has been his pleasure to suppose. The proceeding was a simple and direct one on the part of the American negotiators, and there was no objection made to the extent of it on this quarter by the British. There is yet living and most respectable evidence on this point.

We might decently apologize to our readers for drawing our remarks to such a length, but the subject assumes a practical importance, as it now awaits the action of the constituted authorities of the United States, upon the opinion, which has been duly communicated to them, of the King of the Netherlands. The learned Dr. Rutherford has employed some part of a chapter, which Dr. Paley thought might as well have been spared, to prove that acts, which did not import obligation, were not binding as laws. Great as may be the respect and deference due to the character of a crowned sovereign, who has undertaken to perform such an amicable office, and omitting to ask, whether he continued to be precisely the same political person, or to sustain the same independent relation, at the time

of pronouncing his opinion as that of accepting the authority, it can be no discourtesy to ask, *whether that authority has been executed*. And again, while we are cautious of making a free use of phrases, signifying sovereignty, in application to the proper powers of any of the members of this Union separately, and should be very careful not to intrude upon the sacred precincts of constitutional power, we are at the same time sensible, that there are rights of a most important character, not merely reserved and secured to those members by the great instrument of our prosperity, but which are inherent in the soil which is the basis of them, and cannot so much as be touched without their entire consent.

We decline going into any further argument of our own upon this subject. The magnitude of the interest involved in the issue, in a public and territorial point of view, is one that commands a just and serious consideration. The executive and legislative authorities of Maine and Massachusetts, the two States most immediately interested, have united in the most distinct expressions of their opinions, disaffirming the validity of the formal act communicated by the King of the Netherlands; and the language of the latter State, although less excited and animated than that of the former, appears to us to be neither less clear, nor forcible and determined. The Legislative Committee of Massachusetts go a good way in giving a large and liberal construction of the power of the arbiter, to determine the points of difference, as appears from the extract of the Report which we have already quoted. If the evidence before the arbiter was insufficient, he was authorized to require more and cause further inquiries, but of this faculty he declined to avail himself, not considering the question to be capable of any further elucidation. Upon this the Committee say;

‘The arbiter, having thus declared that the case was not susceptible of a decision upon the evidence, with which he had been furnished, and also that it was not susceptible of any further elucidation by means of additional evidence, seems to have had no alternative left, but to close the proceedings, and resign his functions, without giving any opinion. Instead of this, however, after alleging his inability to pronounce a decision in favor of the line claimed by either party, he attempts to settle the difference in another way, and recommends the adoption of an entirely new boundary, not previously contemplated, or claimed on either side,

and having no pretence of foundation or support in the terms of any of the treaties.

‘This recommendation,’ says the report, ‘terminates the King’s proceedings in regard to the question of the north-eastern boundary. According to the terms of the treaty of Ghent, as above quoted, the two parties engage to consider the decision of the arbiter as final and conclusive on all matters referred to him; and it is stipulated, in the convention of 1827, that the decision of the arbiter, when given, shall be taken as final and conclusive, and shall be carried, without reserve, into immediate effect, by Commissioners appointed for that purpose by the contracting parties. But, as this recommendation of an entirely new boundary is not a decision of any of the points referred to the arbiter, and is declared by himself not to be so, it is of course not binding, as a decision under the stipulations of the treaties. It is hardly necessary to add, that, as the mere recommendation of a friendly Sovereign, given without authority upon a point not submitted to him, it can have no obligatory character, however justly it may be entitled to the most respectful consideration. As the Committee cannot suppose that this will be considered by any one as a doubtful principle, they deem it unnecessary to multiply arguments in support of it. They will merely refer, in illustration of the abuses that would result from the adoption of a contrary principle, to the celebrated case of Bruce and Baliol, rival pretenders to the crown of Scotland, who submitted the decision of their respective claims to Edward I., then King of England, sometimes called the English Justinian. In this case, as in the one submitted to the King of the Netherlands by Great Britain and the United States, the arguments and evidence furnished by the parties were not considered sufficient, to authorize a decision in favor of either; and, in order that the difference might not remain unsettled, the English Justinian adjudged the crown of Scotland to himself. It will hardly be pretended, that this proceeding was conformable to the rules of national law; but it would have been fully justified, by any principle which would give to the recommendation of a new boundary by the King of the Netherlands an obligatory power over the Governments of Great Britain and the United States. If an arbiter have a right to travel out of the record of the submission, and give opinions having the force of law, upon questions not referred to him, it is obvious, that there are no limits to his authority, and that the reference, by two Governments, of any question, however unimportant, to the arbitration of a third, amounts to a complete and unconditional surrender of the national rights and independence of both.

‘The recommendation of the King of the Netherlands is therefore not binding upon either Government. It is nevertheless entitled to very respectful consideration. It is the suggestion of a friendly Sovereign, made with the best intentions, and under an impression, that the adoption of it would be mutually and equally advantageous to both the parties. Although it can have no obligatory character, it may be proper to inquire, whether it is right and expedient that the Government of the United States should voluntarily accede to it, and give it effect.

‘Supposing the question of expediency to be entirely open, the Committee are unable to perceive any very strong reasons for deciding it in the affirmative. They are not aware, that any material inconvenience can result from a further delay in the survey of the north-eastern boundary, as determined by the treaty of 1783 ; while the adoption of the recommendation of the King of the Netherlands would involve the sacrifice of a considerable tract of territory, and an acquiescence, to a certain extent at least, in pretensions on the part of the British agents, which are too extravagant to be regarded for a moment as entitled to serious attention. But the Committee will not enlarge upon the considerations belonging to the question of expediency, because they conceive that this question is precluded by the preliminary one of Constitutional right. The Government of the United States have no constitutional authority to cede to a foreign State any portion of the territory belonging to any one of the States composing the Union, without the consent of such State. They can, without a violation of this rule, settle such questions relating to the boundaries of the Union as were left doubtful by the treaty of 1783, because it is only by the settlement of these questions, that the extent of the territory of the border States can be ascertained. But the situation of the highlands, which, according to the treaties, form the northern boundary in this quarter, is not represented, either in the treaty of 1783, or in that of Ghent, as a doubtful point. The latter treaty provides for ascertaining the point where a certain line strikes the highlands, and for surveying another line, which is described as running in a westerly direction along the highlands. No provision is made for ascertaining the situation of the highlands, which is spoken of as known. The Government of the United States had therefore no Constitutional right to allow it to be drawn in question by England, still less to submit it to arbitration ; and had the King of the Netherlands decided against us on this question, the Committee believe, as they have already remarked, that the act would have been wholly null and void, from a defect of authority in the Government of the United States to make the submission. The only uncertainty which exists in regard to this part of the boun-

dary, results from the want of an accurate survey of a line, the general course of which is well defined. The Government of the United States had a right to cause this line to be surveyed, without regard to the effect which the survey might have upon the extent of the supposed territory of Maine in that quarter. Farther than this, it had no authority to go, without the consent of Massachusetts and Maine.'

The pamphlet on 'the decision of the King of the Netherlands, considered in reference to the rights of the United States and State of Maine,' assumes it as a principle, not to be contested,

'That, as the United States and Great Britain stood in relation to each other and to the King of the Netherlands, as independent nations, the King of the Netherlands had no power whatever over any question of difference between the United States and Great Britain, beyond what those two Governments expressly and by mutual agreement delegated to him. It was not for him to extend his powers by remote inferences, of which he was to constitute himself the sole judge, nor to enlarge and aid his jurisdiction by indefinite and latitudinarian construction. It was not for him to assume the office and attributes of a friendly compounder, governed by no rule or principle but his own discretion, unless such an office and such powers were solemnly and expressly conferred upon him by the high parties interested. There is in such cases, from the very nature of the transaction, no implied power. Every man feels within him, as the dictate of common sense, that a consciousness of the delicacy of the office, and a proper respect for the high parties interested, impose it as a rule, that the arbitrating Sovereign should never take upon himself to extend the limited special powers delegated to him, beyond the most plain, obvious meaning of the solemn, express stipulations of the parties. It is not only indelicate,—it savors of assumption in such cases, to resort to inference and construction in order to enlarge his authority. To maintain that the arbiter is the sole judge of the powers delegated to him and of the measure of his discretion, is to confer upon him the power to make treaties for the parties, as well as to execute them.'

We have an impression on this subject, of which we cannot quite divest ourselves; and that is, that the King of the Netherlands, whether from respect to the difficulties thrown in the way of his decision, or from an opinion that a friendly suggestion from him might answer all the purpose of a decision, actually meant no more than to throw this proposition into a

form, for the consideration of the two Governments, to be rendered effectual by their agreement to adopt it. This idea is strengthened, without advertg to his own circumstances at the time, by observing the appropriate language of adjudication, *il doit être considéré*, in determining the proper head of Connecticut river, in comparison with the loose phrase *il conviendrait*, applied to the other points of this opinion. This is perhaps to be rather regarded as his intention; and the supposition is entirely respectful to him.

We have little inclination or room to pursue a further inquiry into the question of expediency. Our views on this subject are open to the influence of information and reflection. Resolutions are not in all cases a substitute for reasoning; but they sometimes serve to embody its results with great good sense, and to sound purpose. A strong concurrence of opinion, upon a point of public importance, where the subject has been under consideration for a sufficient period, is entitled to much respect. By the award or apportionment of the umpire, he has assigned to Great Britain the precise territory,—or perhaps rather more,—which her plenipotentiaries required, and ours refused to cede at Ghent. On the other hand, he has given to us a *kilometre* of land or water upon a point of Lake Champlain, which is of no importance to us. Since the successive disasters of General Burgoyne and Sir George Prevost, we venture to predict, that there will never be a third attempt to girdle the United States in that direction; and we consider Rouse's Point to be of as little value in a military point of view, as old Crown Point. We have no occasion to be on our guard at that avenue, and if we had, that would be no protection. We have mentioned the fact, that the existence of this abandoned affair was no where alluded to in any manner on behalf of the United States, in laying their case before the arbiter. The fact has been stated and not contradicted, that a British exploring party, in the autumn of 1830, reconnoitred the line of the St. Francis, which has been marked out by the arbiter for our new boundary, and found it boatable to its source. This knowledge may at least serve to explain the readiness of the British Government to accept that limit, when it is assigned to them in 1831. The terms of the British demand for a cession of territory at Ghent, would have been satisfied by an extension of their boundary to the river Madawaska. This was the outside of the original Acadian settlement, and

no provincial grant, either by Governor Thomas Carleton, or since his day, has been made west of the mouth of that river. This too was the source of the St. John, intended by the old Congress. This river, with the Temiscouatu lake and portage, had always afforded the ordinary line of communication to the St. Lawrence. It was made a military route during the last war with Great Britain. Its military advantage was demonstrated ; and the expediency of enlarging the British frontier to the left, that is to say, on the line of march toward Canada, was directly recommended. The St. Lawrence being shut up a great part of the year, and the outlet from St. John's and Halifax to the Atlantic being always open, the importance of these places as depots has been established, and experience has determined the utility of widening the communication from this quarter to Quebec. This is a utility, however, which is foreign to us. For civil purposes and the proper intercourse of peace, the question of a cession of a portion of our territory might be one thing. The argument respecting the transmission of the British mail, has been made use of ; but that mail, we apprehend, is as regularly delivered to Montreal from New York, as it is at Quebec from Halifax. In a *time of peace*, there can be no obstruction. Would to heaven, there could never be any danger of its interruption. Experience, however, does not recommend to a peaceful nation the policy of disarming itself ; and a cession of this frontier augments the British power for all purposes, that enable her to make an impression upon us, in no measurable ratio. It may be desirable, upon the soundest principles of philanthropy, to protect ourselves against a repetition of the stale charge of weak ambition to extend our own limits in that direction, by avoiding to give to a power, already impregnable, an ascendancy and importance, which might operate as excitements to future enterprises on either part against the peace of this continent.

We avow our belief, that the empire of the United States is not to be extended by any hostile encroachment upon the British Provinces. Great Britain is not destined to be ejected from this continent by our arms. Any change in the condition of her colonial dominions here is to come, as we apprehend, from her own consideration. Whether she shall turn her face to the wall, and see the sun set on her dominions upon this side of the Atlantic, depends upon her own will. It is

to her own wisdom, that the prudence of pressing and persisting in this present demand, which has been wearisome to the patience of all concerned, particularly addresses itself. It is, in part, for the benefit of the monitory reflections that may occur upon a review of the policy, exposed by the proclamation of 1763, and the parliamentary act of 1774, revived in the negotiations at Ghent, and expending itself on this last point of dispute,—the requirement to which this question owes its origin,—that we have interwoven with the texture of these remarks, references to those projects which were cherished to cramp and fetter the proper limits of the United States, to an extent beyond what might otherwise appear to be in perfectly good taste, or belong to a precise view of the subject.

We would record our fixed persuasion, that the present positions are best calculated to preserve the prosperity of the British dominions. The associations connected with the occupation of Penobscot, and the enterprise against New Orleans, ought not to be excited, except with a view to prevent a possibility of their returning. If any opportunity have been lost, the moral which American history presents to Great Britain is not to try to recover it. A different sort of retrospection recommends itself to the statesmen and benefactors of our mother country. We can wait the peaceful progress of our own principles. It is for us to maintain our ground, and leave the rest to time and our Constitution.

If there be any question in the public mind, in regard to the real magnitude of the present interest to ourselves, although it may be comprised in the possession of a territory of moderate compass, compared to the whole area of our country, it might be resolved by adverting to the eagerness with which Great Britain has hitherto persisted in the pursuit, and the importance which her politicians have attached to the object. It may be an exaggerated feeling, to be sure, of this consequence, that inspires Colonel Bouchette,* in his recent work on the British

* The opinion of Colonel Bouchette is plainly expressed, that the arbiter has exceeded his authority. 'The award of the umpire,' says he, 'dictated no doubt by a sincere desire of doing impartial justice to the high parties concerned,—is in fact a compromise; and we apprehend, that the question of reference did not contemplate a decision upon that principle; but was confined to the mere declaration of what was the boundary intended and meant by the treaty of 1783. It was in the spirit of that treaty alone, that the rule of decision was to be sought for, and not in abstract theories of equity,' &c. Deriving no validity from

dominions in America, to state, that the acceptance of this portion of their claim awarded them by the decision of the King of the Netherlands, will be the first step to the loss of their colonial empire. If Great Britain can scarcely preserve that empire with this concession, it would hardly be important to her to make a point of it. There are two opinions, however, prevailing upon this subject in Great Britain; and her colonial policy is probably at this moment on a poise. The great importance of these colonies to the mother country is mainly urged by those, who are there opposed to the progress of political reform. The *Quarterly Review*, Sir Howard Douglas, and that staunch and respectable supporter of the tory interest, *Blackwood's Edinburgh Magazine*, declare the indispensableness of these appendages; and the political articles in these journals announce the loss of the colonies as one of the inevitable consequences of reform. Whether, in such an event, they shall constitute an independent Government under the protection of Great Britain, or what 'variety of untried being' their condition is to assume, has even begun to be a speculation. But at present her colonial empire is considered as a unit; her Canadas, her fisheries, her West-Indies are all considered parts of the same great whole; and we can receive no equivalent for any valuable concession, except such an one, as shall give us forever the free trade of this Western hemisphere.*

the authority of the arbiter, therefore, by common consent, the proceeding can acquire an operation and effect only by its becoming the act of the two Governments, by their adoption and agreement; and such, we have no great doubt, was the intention of the King of the Netherlands.

* While this article was going through the Press, the Legislature of the State of Maine consented to treat with the Government of the United States, for a cession of its rights of soil and jurisdiction in the territory without the line recommended by the King of the Netherlands, with an understanding that this line was to be accepted. Only three or four weeks before, the same Legislature had adopted Resolves authorizing the appointment of agents at Washington and Boston, to prevent, if possible, any such arrangement. The motives that led to this sudden change of policy are not known. It was agreed to in a secret session of the Legislature, in consequence of letters from the agent at Washington, which have not been published, and of which a communication was refused to the Government of Massachusetts, whose friendly co-operation in the whole business had been so recently solicited and obtained. The transaction wears very much the appearance of a mere political or rather party manœuvre, and that of a kind not particularly honorable to the persons engaged in it. We shall probably return to the subject in a future number.